

000495		REQUEST FOR COUNCIL ACTION CITY OF SAN DIEGO		1. CERTIFICATE NUMBER (FOR AUDITOR'S USE ONLY) 2800194		106 9/25	
TO: CITY ATTORNEY		2. FROM (ORIGINATING DEPARTMENT): Real Estate Assets Department		3. DATE: September 4, 2007			
4. SUBJECT: <div style="text-align: center;">6th Avenue Storm Drain Easement Acquisition</div>							
5. PRIMARY CONTACT (NAME, PHONE, & MAIL STA.) STEVE GEITZ (619) 236-6311, MS 51A		6. SECONDARY CONTACT (NAME, PHONE, & MAIL STA.) David Yeargain (619) 236-6721, MS 51A		7. CHECK BOX IF REPORT TO COUNCIL IS ATTACHED <div style="text-align: right;">X</div>			
8. COMPLETE FOR ACCOUNTING PURPOSES							
FUND 30300		DEPT. 534 30244		9. ADDITIONAL INFORMATION / ESTIMATED COST: Cost: \$2,500 for property rights Job: 530238 cc: Dept. Docket Clerk Thomas Guide Page: 1269 B-5			
ORGANIZATION 102		OBJECT ACCOUNT 4279 4279					
JOB ORDER 130082		C.I.P. NUMBER 13-005.0					
AMOUNT \$2,500		C.I.P. NUMBER 13-005.0					
10. ROUTING AND APPROVALS							
ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED	ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED
1	ORIGINATING DEPARTMENT	<i>[Signature]</i>	9/4/07	8	DEPUTY CHIEF	<i>[Signature]</i>	9/4/07
2	E&CP	<i>[Signature]</i>	9/5/07	9	TRANS NET	<i>[Signature]</i>	9-13-07
3	EAS	<i>[Signature]</i>	9/6/07	10	CITY ATTORNEY	<i>[Signature]</i>	9/10/07
4	EOCP/MEMO 5/3/96	<i>[Signature]</i>		11	ORIG. DEPT	<i>[Signature]</i>	9/11/07
5	LAISON OFFICE	<i>[Signature]</i>	9/7/07	DOCKET COORD: _____ COUNCIL LIAISON: _____ COUNCIL PRESIDENT <input type="checkbox"/> SPOB <input checked="" type="checkbox"/> CONSENT <input type="checkbox"/> ADOPTION <input type="checkbox"/> REFER TO: <i>[Signature]</i> COUNCIL DATE: <i>[Signature]</i>			
6	FINANCIAL MANAGEMENT	<i>[Signature]</i>	9/10/07				
7	Auditors	<i>[Signature]</i>	9/13/07				
11. PREPARATION OF: <input checked="" type="checkbox"/> RESOLUTION(S) <input type="checkbox"/> ORDINANCE(S) <input type="checkbox"/> AGREEMENT(S) <input type="checkbox"/> DEED(S)							
Authorizing the Mayor to accept Grant of Easement document, executed by Windmill Construction Company/Promontory Point LLC, granting a drainage easement across portions of Lots 28 and 29 of Fleisher's Addition to San Diego, according to Map thereof, No. 811, filed in the Office of the County Recorder.							
Authorizing the Auditor and Comptroller to disburse \$2,500 for acquisition of property rights required for completion of the project. <i>From CIP 130050 (JO 130082), 6th Ave Drain replacement</i>							
11A. MANAGER'S RECOMMENDATIONS: ADOPT THE RESOLUTION							
12. SPECIAL CONDITIONS (REFER TO A.R. 3.20 FOR INFORMATION ON COMPLETING THIS SECTION.) COUNCIL DISTRICT(S): 2 COMMUNITY AREA(S): MIDTOWN ACTION REQUESTED BY: REAL ESTATE ASSETS DEPARTMENT LOCATION: End of cul-de-sac at 6 th Avenue and Arbor Drive, sloping down to Interstate 163 ENVIRONMENTAL ASSESSMENT: This activity is not a "project" and is therefore not subject to CEQA pursuant to State CEQA Guidelines Section §15060(c)(3). VALUE: Staff has determined a nominal value of \$2,500 for property rights. HANDLING: DO NOT RECORD: RETURN DOCUMENTS TO Real Estate Assets Department, Attention: David Yeargain, M.S. 51A for further handling.							

EXECUTIVE SUMMARY SHEET

DATE REPORT ISSUED:

REPORT NO.

ATTENTION: Council President and City Council

ORIGINATING DEPT: Real Estate Assets

SUBJECT: Acquisition of permanent easement for purpose of court mandated storm drain repair and improvement.

COUNCIL DISTRICT: 2

STAFF CONTACT: Steve Geitz (619-236-6311)

REQUESTED ACTION:

Adopt a Resolution authorizing the acceptance of an Easement Deed for property rights required for the repair and improvement to the 6th Avenue Storm Drain.

STAFF RECOMMENDATION:

Staff recommends adopting the Resolution.

EXECUTIVE SUMMARY:

As part of the settlement agreement between the City and Sleepy Hollow Apartments, the City agreed to construct new drainage facilities at and adjacent to the 6th Avenue cul de sac. The improvements include an enlargement of the storm drain (replace existing storm drain) to increase ability to collect water draining downhill on 6th Avenue, replacing existing underground pipe with a larger pipe, and installation of new and larger diameter drainage pipe running down slope at the foot of the Sleepy Hollow Apartment driveway. The down slope portion of the construction requires acquisition of easement rights on adjoining land for the construction of an extended drain pipe and "headwall" improvements just above CalTrans right of way.

FISCAL CONSIDERATIONS:

\$2,500 for acquisition of property rights.

PREVIOUS COUNCIL and/or COMMITTEE ACTION: NoneCOMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS: None

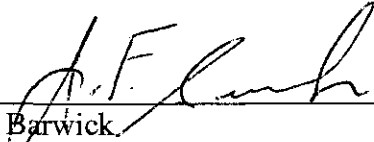
000498

KEY STAKEHOLDS & PROJECTED IMPACTS (if applicable):

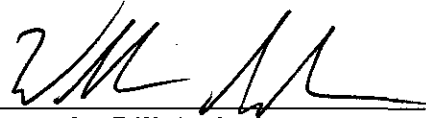
City of San Diego Water Department

Sleepy Hollow Apartments owner

Repair and improvements to the existing storm drain will result in the increased collection of storm water runoff into drainage facilities resulting in increase protection of the adjacent apartments from flooding.



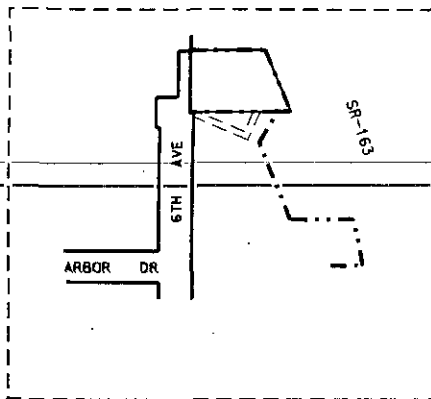
Jim Barwick
Real Estate Assets Director



Approved: Bill Anderson
Interim Deputy Chief Operating Officer of
Land Use and Economic Development

Attachments:

1. Acquisition Drawing
2. Legal Description



REFERENCE

MAP Nos. 811 & 10572

BASIS OF BEARINGS

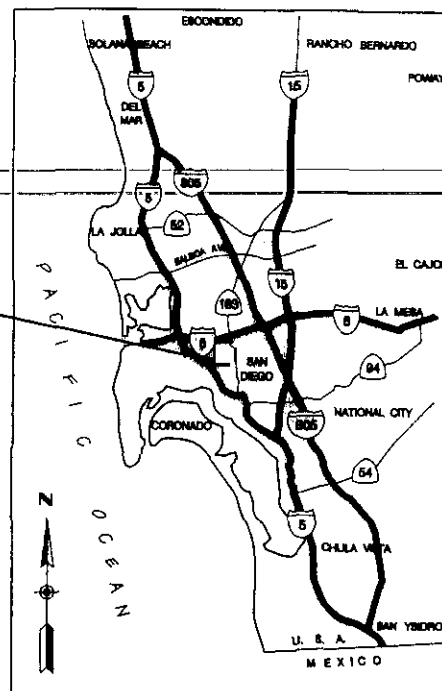
FOR THIS DRAWING IS THE LINE BETWEEN
GPS 1053 AND GPS 1051 AS SHOWN ON ROS
No. 14492.

Bearing N2° 52' 55" E

OWNERS

WINDMILL CONSTRUCTION CO., INC., A CALIFORNIA CORPORATION, AS TO AN UNDIVIDED 50% INTEREST

PROMONTORY POINT, LLC, A CALIFORNIA LIMITED LIABILITY COMPANY, AS TO AN UNDIVIDED 50% INTEREST, AS TENANTS IN COMMON



VICINITY MAP

NO SCALE

PREPARED BY:

THE CITY OF SAN DIEGO ENGINEERING & CAPITAL
PROJECTS DEPT., FIELD DIV, LAND SURVEY
SECTION, UNDER THE DIRECTION OF
FREDERICK R. LoPAGE, ASSOC. LAND SURVEYOR.

Frederick R. LoPage 3/27/2007
FREDERICK R. LoPAGE P.L.S. 7524 DATE



RESOLUTION No.: _____

ADOPTED: _____

F/P: _____

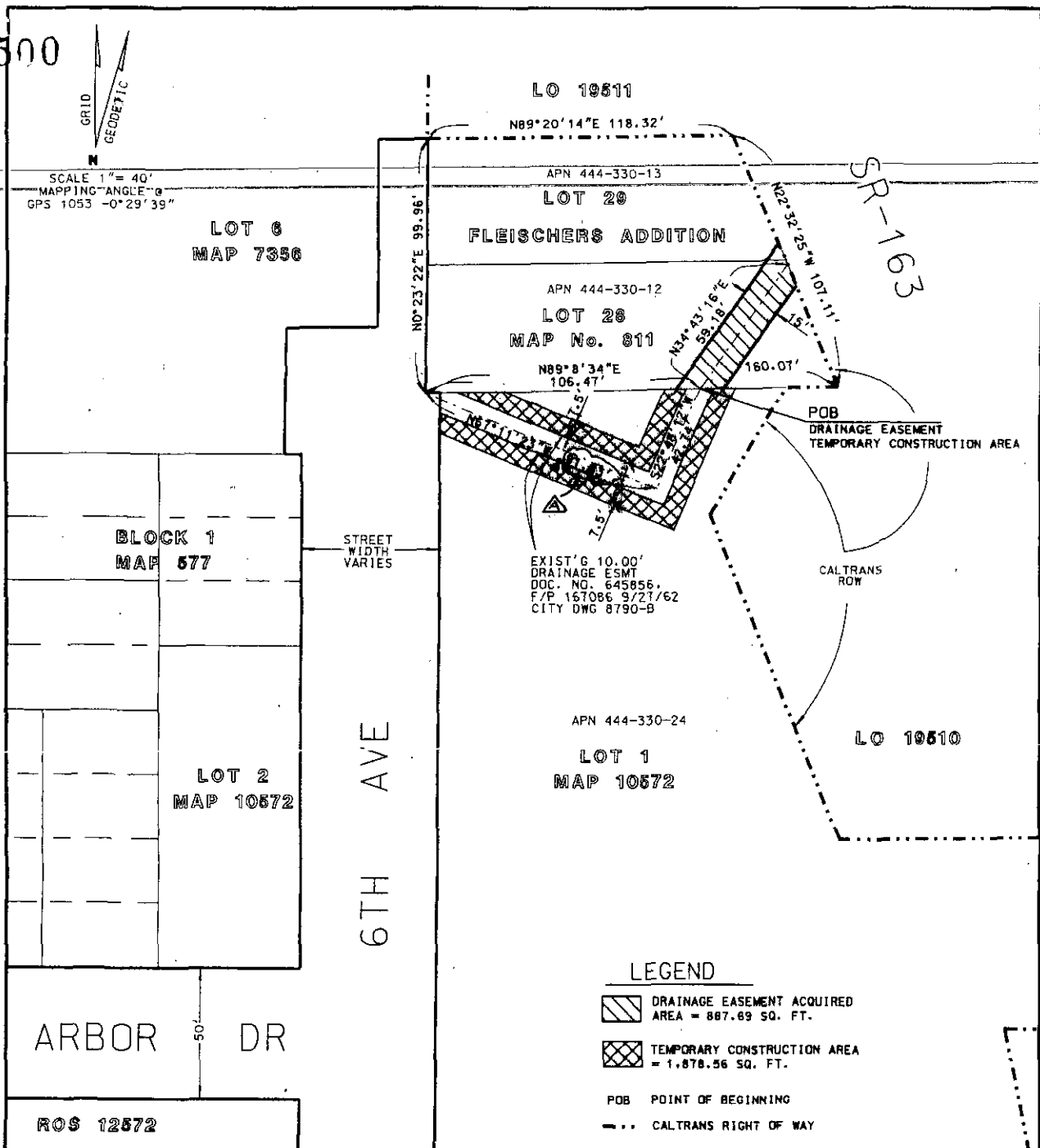
RECORDED: _____

DRAINAGE EASEMENT -

THAT PORTION OF LOTS 28 & 29 OF FLEISHERS ADDITION MAP No. 811

DESCRIPTION	BY	APPROVED	DATE	FILMED	CITY OF SAN DIEGO, CALIFORNIA	W.O. 130071
ORIGINAL	FRL				SHEET 1 OF 2 SHEET	1855-6281
CHANGE	FRL	RJD	5/1/07		<i>Ronald J. Doherty</i> 4/20/07	NAD 83 COORDINATES
CHANGE	FRL	RJD	7/16/07		FOR CITY ENGINEER DATE	214-1719
						NAD 27 COORDINATES
						20696-B
STATUS						

000500



PREPARED BY:

THE CITY OF SAN DIEGO ENGINEERING & CAPITAL
PROJECTS DEPT., FIELD DIV, LAND SURVEY
SECTION, UNDER THE DIRECTION OF
FREDERICK R. LoPAGE, ASSOC. LAND SURVEYOR.

Frederick R. LoPage 3/27/2007
FREDERICK R. LoPAGE P.L.S. 7524 DATE



RESOLUTION No.:

ADOPTED:

F/P:

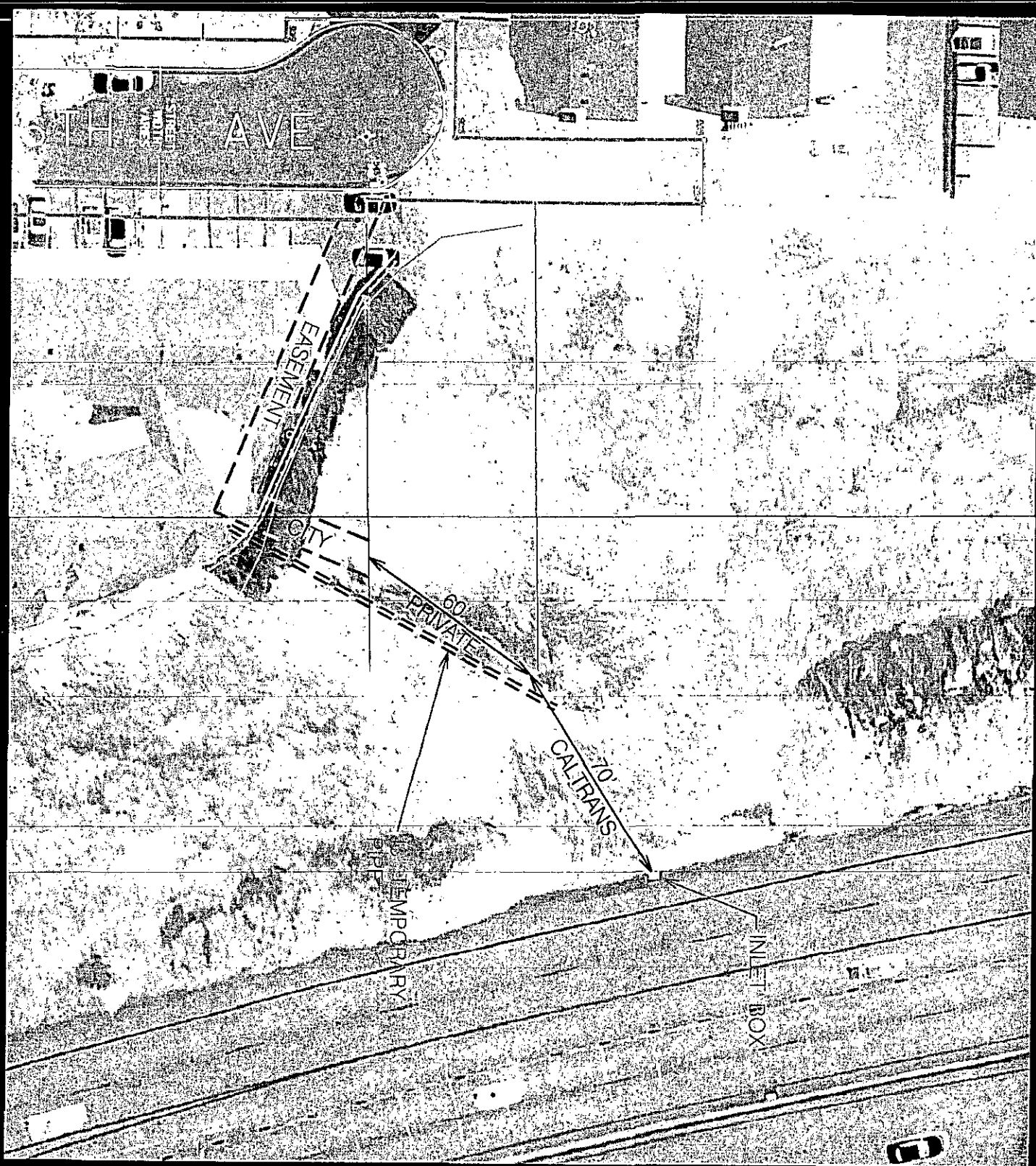
RECORDED:

DRAINAGE EASEMENT -

THAT PORTION OF LOTS 28 & 29 OF FLEISHERS ADDITION MAP No. 811

DESCRIPTION	BY	APPROVED	DATE	FILMED	CITY OF SAN DIEGO, CALIFORNIA	W.O.
ORIGINAL	FRL				SHEET 2 OF 2 SHEET	130071
CHANGE	FRL	RJD	5/4/07		<i>Thomas J. L. Lister</i> 4/20/07	1855-6281
CHANGE	FRL	RJD	7/10/07		FOR CITY ENGINEER DATE	NAD 83 COORDINATES
						214-1719
						NAD 27 COORDINATES
						20696-B
STATUS						

000501



000503

**The City of San Diego
CERTIFICATE OF CITY AUDITOR AND COMPTROLLER**

CERTIFICATE OF UNALLOTTED BALANCE

ORIGINATING

AC

2800194

DEPT.

NO.

070

I HEREBY CERTIFY that the money required for the allotment of funds for the purpose set forth in the foregoing resolution is available in the Treasury, or is anticipated to come into the Treasury, and is otherwise unallotted.

Amount: \$2,500.00 Fund: 30244/102

Purpose: To authorize the expenditure of funds from the 6th Ave Storm Drain Project for the purpose of acquiring easements rights required for the completion of the project.

Date: September 13, 2007

By:  Caryn McGriff
AUDITOR AND COMPTROLLER'S DEPARTMENT

ACCOUNTING DATA										
ACCTG. LINE	CY PY	FUND	DEPT	ORG.	ACCOUNT	JOB ORDER	OPERATION ACCOUNT	BENF/ EQUIP	FACILITY	AMOUNT
1	0	30244	30244	102	4279	130082				\$2,500.00
TOTAL AMOUNT										\$2,500.00

FUND OVERRIDE ☐

CERTIFICATION OF UNENCUMBERED BALANCE

I HEREBY CERTIFY that the indebtedness and obligation to be incurred by the contract or agreement authorized by the hereto attached resolution, can be incurred without the violation of any of the provisions of the Charter of the City of San Diego; and I do hereby further certify, in conformity with the requirements of the Charter of the City of San Diego, that sufficient moneys have been appropriated for the purpose of said contract, that sufficient moneys to meet the obligations of said contract are actually in the Treasury, or are anticipated to come into the Treasury, to the credit of the appropriation from which the same are to be drawn, and that the said money now actually in the Treasury, together with the moneys anticipated to come into the Treasury, to the credit of said appropriation, are otherwise unencumbered.

Not to Exceed: _____

Vendor: _____

Purpose: _____

Date: _____

By: _____
AUDITOR AND COMPTROLLER'S DEPARTMENT

ACCOUNTING DATA										
ACCTG. LINE	CY PY	FUND	DEPT	ORG.	ACCOUNT	JOB ORDER	OPERATION ACCOUNT	BENF/ EQUIP	FACILITY	AMOUNT
TOTAL AMOUNT										

RESOLUTION NUMBER R-_____

DATE OF FINAL PASSAGE

A RESOLUTION AUTHORIZING THE MAYOR TO ACCEPT
GRANT OF EASEMENT DOCUMENT GRANTING A
DRAINAGE EASEMENT ACROSS PORTIONS OF LOTS 28
AND 29 OF FLEISHER'S ADDITION TO SAN DIEGO.

WHEREAS, the City of San Diego agreed to construct new drainage facilities at and
adjacent to the 6th Avenue cul de sac; and

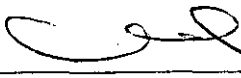
WHEREAS, the improvements include an enlargement of the storm drain and installation
of new and larger diameter drainage pipe; NOW, THEREFORE,

BE IT RESOLVED, be it resolved by the Council of the City of San Diego, that the
Mayor is authorized to accept Grant of Easement Document by Windmill Construction
Company/Promontory Pont LLC, granting a drainage easement across portions of Lots 28 and 29
of Fleisher's Addition to San Diego, according to Map thereof, No. 811, filed in the Office of the
County Record.

BE IT FURTHER RESOLVED, that the Auditor and Comptroller is authorized to
disburse Two Thousand Five Hundred Dollars (\$2,500), from CIP 130050 (JO130082), 6th
Avenue Drain Replacement, for acquisition of the property rights required for completion of the
project.

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By



Todd Bradley
Deputy City Attorney

TB:bas

08/31/07

Or.Dept:READ

R-2008-179

MMS #5258

I hereby certify that the foregoing Resolution was passed by the Council of the City of San
Diego, at this meeting of _____

ELIZABETH S. MALAND
City Clerk

By _____
Deputy City Clerk

Approved: _____
(date)

JERRY SANDERS, Mayor

Vetoed: _____
(date)

JERRY SANDERS, Mayor

Page 1
of 7

Indexing Instruction

**Index as Agreement Affecting
Real Property**

RECORDING REQUESTED BY:|

|
MICHAEL J. AGUIRRE, City Attorney|
ROBERT J. WALTERS, Deputy|

AND WHEN RECORDED MAIL TO:|

|This document exempt from fees per
Michael J. Aguirre, City Attorney|Government Code section 6103.
Claudia Gacitua Silva, Deputy|To the benefit of the City of San Diego.
City of San Diego|
1200 Third Avenue, Suite 1100|**SPACE ABOVE THIS LINE**
San Diego, CA 92101-4100|**RECORDER'S USE**

This Agreement applies to and affects the following real property:

1)That real property commonly known as "Sleepy Hollow Apartments" located at 4201 through 4225 Sixth (6th) Avenue, San Diego, CA 92103, more particularly described as follows:

PARCEL NOS. 444-330-24, 444-330-25, and 444-330-26,
IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO,
STATE OF CALIFORNIA, ACCORDING TO MAP
THEREOF FILED IN THE OFFICE OF THE COUNTY
RECORDER OF SAN DIEGO COUNTY, Map No. 10572 AS
FILE NOS. 47933 OF OFFICIAL RECORDS.

**SETTLEMENT AGREEMENT AND
RELEASE OF ALL CLAIMS**

THIS SETTLEMENT AGREEMENT AND RELEASE OF ALL CLAIMS [Agreement] is made as of March ____, 2007, by and between THE CITY OF SAN DIEGO, a municipal corporation [City] and CHARLES F. BAHDE, PILAR BAHDE, and C.F. BAHDE, INC. [Plaintiffs], [collectively referred to as "The Parties"], who agree as follows:

RECITALS

A. On or about January 13, 2006, Plaintiffs filed their Complaint for Inverse Condemnation and Nuisance against the City, in a San Diego County Superior Court action identified as Bahde vs. City of San Diego, Case No. GIC 859689.

B. All of the parties hereto now wish to sever, release, discharge, and terminate any and all claims, demands, controversies, causes of action, damages, rights, liabilities, and obligations between them.

DEFINITIONS

As used in this Agreement, the following words and phrases have the meanings stated:

Associated Entities and Persons. "Associated Entities and Persons" includes, but is not limited to, administrators, representatives, successors-in-interest, assigns, subrogees, agents, employees, attorneys, former employees, franchisees, sub-tenants or similarly related entities or persons.

Costs. "Costs" shall include all costs, losses, liabilities, damages, judgments, expenses, fees, attorneys' fees, and obligations related to the subject of the complaint referenced herein.

Claims. "Claims" shall include all claims, rights, liens, demands, liabilities, indebtedness, agreements, promises, and causes of action (asserted, unasserted, known, unknown, contingent, accrued, inchoate, or otherwise).

The Property. References to "the property" shall refer to Plaintiffs' real property as described in the Complaint on file in San Diego Superior Court Case of Bahde vs. City of San Diego, Case No. GIC 859689 and as identified in this Agreement and commonly known as "Sleepy Hollow Apartments" located at 4201 through 4225 Sixth (6th) Avenue, San Diego, CA 92103.

RELEASE AND DISCHARGE OF PARTIES

NOW, THEREFORE, the parties agree as follows:

1. SETTLEMENT TERMS:

1.1. Dismissal of Action With Prejudice. Upon execution of this Agreement by Plaintiffs and payment of \$45,546.00 by the City in accordance with terms of a letter from counsel for Plaintiffs dated October 11, 2006 (as described in Paragraph 1.2 below), Plaintiffs promise and agree that a Request for Dismissal With Prejudice of the action filed by Plaintiffs against City shall be delivered to the City. City shall file the Request for Dismissal With Prejudice with the Court in which the action is pending once the Agreement has been fully executed. The Request for Dismissal shall bear the notation: "Each party shall bear its own attorneys' fees and costs arising from and/or related to the claims, the pending litigation, and in connection with the preparation of the Settlement Agreement."

1.2. Performance of Mutual Obligations By The Parties. Each party shall the following obligations:

1.2.1 Plaintiffs Will Repair Slope. Plaintiffs will cause the slope (as described in Plaintiffs' Complaint) to be repaired at Plaintiffs' expense according to the repair specifications set forth in the Ninyo & Moore recommendations obtained by the Plaintiffs as previously presented to City. Such repairs shall be completed within six (6) months of the date of signing of this Agreement, and shall be completed before the City is ready to begin its work in replacing the storm drain facilities as described herein.

1.2.2 City Construction Of New Drainage Facilities. City will agree to construct new drainage facilities at and adjacent to the 6th Avenue cul de sac adjoining the property which will include the following work, which work will be commenced during Summer 2007 or as soon thereafter as can be done by the City, and will include the following:

(A) enlargement of the storm drain (replace existing storm drain) on the Sleepy Hollow side of the 6th Avenue cul de sac, to increase ability to collect water draining downhill on 6th Avenue;

(B) installation of an enlarged underground pipe (replacing existing pipe) running underground from the 6th Avenue cul de sac street storm drain running to the drain at bottom of the Sleepy Hollow driveway;

(C) installation of enlarged secondary storm drain (replace existing drain at bottom of the Sleepy Hollow driveway);

(D) installation of new and enlarged diameter drainage pipe running down slope at the foot of the Sleepy Hollow driveway (where the previous pipe broke);

(E) repair and re-landscape the slope beneath the old drain pipe which broke in February 2005;

(F) acquisition of easement rights on land adjoining Plaintiffs' property (adjoining land owned by "Windmill") for construction of an extended drain pipe and "head wall" improvements (just above CALTRANS right of way) which will break the velocity of the water flow and allow drainage to HWY 163;

(G) City will provide advice to Sleepy Hollow Plaintiffs during upcoming rainy season about placing sand bags along the long existing driveway to channel water into the street instead of washing down the driveway and across the slope bank;

1.3 Attorneys' Fees Incurred in Litigation. Each party shall bear its own respective attorneys' fees and costs arising from or related to the claims, the pending litigation, and in connection with the preparation of the Agreement.

2. RELEASE OF CLAIMS.

2.1 Release by Plaintiffs. For and in consideration of the actions set forth in paragraph 1.1, Plaintiffs, for themselves and on behalf of their Associated Entities and Persons, do hereby release, acquit, and forever discharge City from any and all claims, actions, causes of action, demands, rights, debts, agreements, promises, liabilities, losses, damages, Costs and expenses, either known or unknown of any nature or amount whatsoever, whether based on tort, contract, violation of statute, negligence, declaratory relief, intentional interference with contractual relationship, negligent interference with contractual relationship, unfair business practices, fraud, negligent misrepresentation, promissory estoppel/detrimental reliance, mandamus, or any other theory of liability or declaration of rights whatsoever, which may now have accrued, arising directly or indirectly from or based on any cause, event, transaction, act, omission, occurrence, condition or matter, of any nature whatsoever, which has occurred, and which did or could have been alleged in the above mentioned lawsuit.

2.2 Waiver of Civil Code Section 1542. The release given in this Agreement includes claims and costs that are unknown and/or not suspected to exist. Plaintiffs waive all rights which may exist under Section 1542 of the Civil Code of the State of California, which provides:

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

It is understood and agreed that the release provision of subsection 2.1. is a full and final release of all liability, claims, demands, actions, causes of action, and rights of every nature and kind and that it extinguishes claims that are known, unknown, foreseen, or unforeseen. Plaintiffs understand and acknowledge the significance and

consequence of this specific waiver of Section 1542 and assumes full responsibility for any injuries, damages, losses, or liability that it may incur. The parties hereby understand and agree that, notwithstanding this section, if new or additional damage to Plaintiffs' property is the result of a period of heavy rains that occur subsequent to the execution of this Agreement, Plaintiffs are not precluded by this Agreement from asserting a future claim against the City related thereto. In addition, notwithstanding this section, neither party waives any right or claim regarding any change or alteration in the use or condition of the Property that occurs following the execution of this Agreement.

3. GENERAL

3.1 Covenant not to sue. Each party releasing claims under this Agreement agrees that such party shall not make, assert or maintain any action, demand or lawsuit against any other party, or the other party's Associated Entities and Persons, for claims released pursuant to this Agreement.

3.2 Further Assurance. Each party shall execute all documents and do all acts reasonably necessary to carry out the intent of this Agreement.

3.3 Successors. The provisions of this Agreement shall be deemed to obligate, extend to, and inure to the benefit of, the successors, assignees, transferees, grantees, and indemnities of each of the parties to this Agreement.

3.4 Challenges to Agreement. If any person or group not a party to this Agreement challenges it, or challenges the City's actions related to this Agreement, Plaintiff shall defend, indemnify and hold the City harmless.

3.5 Representations Regarding Authority. The parties, and their signatories below, represent and warrant that they are legally authorized and competent to execute this Agreement, which is intended to be a legally binding contract dealing with the release and/or conveyance of certain valuable, important rights. Each party represents and warrants that it has not assigned, transferred, or purported to assign or transfer to any person or entity any claim released, or any rights, privileges or benefits conferred and/or confirmed herein, and each party agrees to defend, indemnify, and hold harmless the other party from any claims that arise as a result of anyone asserting such a claim.

3.6 Independent Counsel. Each of the parties to this Agreement acknowledges and represents that it has been represented by independent counsel of its own choice through all negotiations which preceded the execution of this Agreement, and that it is freely and voluntarily executed this Agreement with the consent, and upon the advice, of independent counsel. Each of the parties to this Agreement further acknowledges that they have read this Agreement and have had its terms and consequences explained by independent counsel.

3.7 California Law. This Agreement is made and entered into in the State of California and shall, in all respects, be interpreted, enforced, and governed by and under the laws of the State of California.

3.8 Attorneys' Fees. If any dispute arises pertaining to this Agreement, each party shall bear its own costs and fees.

3.9 Interpretation. Wherever the context so requires, the singular number shall include the plural; the plural shall include the singular; and the masculine gender shall include the feminine and neuter genders. No provision of this Agreement shall be interpreted against a party to this Agreement because that party or his or its legal representative drafted that provision.

3.10 Captions. The captions by which the sections and subsections of this Agreement are identified are for convenience only and shall have no effect upon its interpretation.

3.11 Integration. This Agreement (after full execution) memorializes and constitutes the entire agreement and understanding between the parties, and supersedes and replaces all prior negotiations, proposed agreements, and agreements, whether written or unwritten. Each of the parties to this Agreement acknowledges that no other party, nor any agent, or attorney of any other party, has made any promise, representation, inducement, or warranty whatsoever, express or implied, which is not expressly contained in this Agreement; and each party further acknowledges that he has not executed this Agreement in reliance upon any collateral promise, representation, inducement, or warranty, or in reliance upon any belief as to any fact not expressly set forth by this Agreement. This Agreement may be amended or modified only by a writing signed by all parties to this Agreement which specifically states it is an amendment to this Agreement. If such a written amendment is entered into, such written amendment shall modify only the provisions of this Agreement specifically modified, and shall be deemed incorporated by reference, unchanged, all remaining provisions of this Agreement. No waiver of any of the provisions of this Agreement shall be deemed, or shall constitute, a waiver of any other provisions, whether or not similar, nor shall any waiver constitute a continued waiver. No waiver shall be binding unless executed in writing by the party making the waiver.

3.12 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original, but all of which shall constitute one and the same instrument.

3.13 Recordation. This Agreement shall be executed in recordable form by each of the parties before a Notary Public. After this document has been fully executed by all of the parties it will be recorded by the City as an agreement affecting real property, in the Office of the Recorder of the County of San Diego, State of California.

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3.14 Release Not Admission Of Liability. It is expressly acknowledged and agreed that no party admits, expressly or impliedly, any fact or liability of any type or nature with respect to any matter, or the sufficiency of any claims, allegations, assertions, or positions of any party; no party has made any such admissions; and this Agreement is entered into solely by way of compromise and settlement only.

3.15 Forum Selection. If any action is brought by any party arising out of or in any way related to any of the terms, covenants and conditions of this Agreement, each party agrees that the forum for such action or actions shall be a court of competent jurisdiction within the County of San Diego, State of California.

3.16 Assignments. The parties hereby represent that they have not previously assigned, transferred, or purported to have assigned or transferred in any manner, the claim held by it, him or her against the other party. Each party agrees to indemnify and hold harmless the other and pay the other's attorneys' fees in the event that any individual or entity asserts a purported written assignment of a claim from the party to that individual or entity.

3.17 Notices. Any notice from one party to another shall be delivered either personally, via United States certified mail, return receipt requested, or via commercial air courier, postage fully prepaid, addressed as follows:

To Plaintiffs:

Michael B. Poynor, Esq.
Michael B. Poynor A Law
Corporation
1508 West Lewis Street
San Diego, CA 92103-1221
FAX: (619) 688-2121

To Defendants City of San Diego

Office of the City Attorney, Civil Litigation Division
Attn: Robert J. Walters
1200 Third Avenue, Suite 1100
San Diego, CA 92101-4100
FAX: (619) 533-5856

Any notice shall be deemed delivered upon the earlier of personal receipt or forty-eight (48) hours after the time of deposit in the United States mail, or deposit with a commercial air courier service, as the case may be. In the event that any party changes its address, such change of address shall be communicated to the other parties in the manner set forth in this section.

3.18 Survival Of Representations and Warranties. The representations, warranties, and releases set forth in this agreement shall remain in full force and effect and shall survive the consummation of this Agreement.

3.19 Entire Agreement, Further Assurances. This Agreement constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof and may be so modified only by written agreement signed by all the parties hereto. The Parties hereto also agree to execute such other documents or to take such action as may be reasonably necessary to further the purposes of this Agreement.

000514

3.20 Court Jurisdiction Reserved. Jurisdiction of the court is expressly reserved for the purpose of enforcing this Settlement Agreement and resolving and disputes or conflicts between the parties regarding its terms.

Dated: _____

CHARLES F BAHDE

Dated: _____

PILAR BAHDE

C.F. BAHDE, Inc.,

Dated: _____

By: _____, President

CITY OF SAN DIEGO

Dated: _____

Jerry Sanders, Mayor

APPROVED AS TO FORM AND CONTENT:

**MICHAEL B. POYNOR,
A LAW CORPORATION**

Dated: _____

By: _____
Michael B. Poynor, Esq.

Attorneys for Plaintiffs

MICHAEL J. AGUIRRE, City Attorney

Dated: _____

By: _____
Robert J. Walters, Deputy

Attorneys for Defendant
City of San Diego